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IN THE

Supreme Court of the United States

No. 821

PAT BELL and HAZEL Bell, *Petitioners,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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COME NOW Pat Bell and Hazel Bell and respectfully petition the Supreme Court of the United States for a writ of certiorari for review of the judgment of the United States Court of Appeals for the Tenth Circuit rendered in the case of Pat Bell and Hazel Bell, Applicants, versus The United States of America, Appellee, on the appeal of the judgment entered in said case by the United States District Court for the Northern District of Oklahoma, and for such petition, state to the Court as follows:

I

REPORTS OF OPINIONS OF COURT BELOW

This case, styled Pat Bell and Hazel Bell vs. United States of America, was numbered 9106 in the United States Court of Appeals for the Tenth Circuit. The opinion has been officially reported at 380 F. 2d 682. A copy of the Opinion is appended.

In the trial court, the United States District Court for the Northern District of Oklahoma, this case was styled United States of America vs. Pat Bell and Hazel Bell. The Opinion rendered by that Court has not been reported, officially or unofficially.

II

GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the United States Court of Appeals for the Tenth Circuit sought to be reviewed was entered on the 30th day of June, 1967, in accordance with the Court's Opinion.

Petitioners were granted an extension of time in which to file a Petition for Rehearing which was timely filed and then denied by Order entered on the 17th day of August, 1967.

The statutory provision believed to confer on the Supreme Court jurisdiction to review the judgment in question by writ of certiorari is 28 U.S.C. § 1254 (1), and Rule 19 (b) of this Court.

III

QUESTIONS PRESENTED FOR REVIEW

The petitioners were in the cattle business and borrowed money from the Government under the Special Livestock Loan Act, Title 12 U.S.C.A. § 1148a-2, which loan was less than $50,000 and was approved by the local Special Livestock Committee at the County level, as provided in the Act of Congress.

The plan of the local Special Livestock Committee was to permit further loans for full feeding the cattle and making the loan plan flexible with the consent of the Committee to make changes to meet changing conditions as to weather and prices. The local Committee's approval was not concurred in by personnel in the Oklahoma State Office of the Farm Home Administration who returned it to the local Committee. Further loans for full feeding the cattle were also disapproved.

The State level representative of the Secretary of Agriculture required the petitioners to sell their cattle at a low market and at a loss. Suit was filed on the loan notes for a deficiency and judgment was granted the Government for the deficiency.

The questions presented, therefore, are twofold.

1. Does the local Livestock Committee created under the Special Livestock Act have the right to approve livestock loans, including extensions and making additional loans without hindrance or direction from State level officers of the Farm Home Administration or the Secretary of Agriculture in view of the fact the Livestock Act provides:

> "* * * The loans shall be subject to approval by a special committee appointed by the Secretary to serve for the particular area as determined by the Secretary. * * * The committee shall consist of at least three members appointed by the Secretary from local persons having recognized knowledge of the livestock industry. The committee shall perform such additional functions under this

section and section 1148a-4 of this title, including general direction of the servicing of the loans, as the Secretary may presribe. * * *"

2. Does the Department of Agriculture have the power to sanction a regulation by the Secretary of Agriculture which restricts unnecessarily the purpose of the Special Livestock Loan Program, as well as bureaucratic rulings misinterpreting the regulations on eligibility for loans by feeders of livestock?

IV

CONSTITUTIONAL OR OTHER PROVISIONS OF LAW INVOLVED

This case involves the Livestock Loan Act, Title 12, U.S.C.A. § 1148a-2(c) as follows:

"(c) For a period of four years from July 14, 1953, loans for $2,500 or more may be made to established producers and feeders of cattle, sheep, and goats (not including operators of commercial feed lots) who have a good record of operations, but are unable temporarily to get the credit they need from recognized lenders and have a reasonable chance of working out of their difficulties with supplementary financing. After the expiration of the period specified herein, such loans may be made only for supplementary advances to producers indebted for loans made under this subsection, but no such loan shall be made in any event after July 14, 1959. The loans may be made on such security as the borrower has available and for the time reasonably required by the needs of the borrower but not exceeding, in the first instance, a period of three years. The creditors of the applicant will not be asked to subordinate their indebtedness but must be willing to work with the borrower to the

extent of executing standby agreements for such periods of time as is reasonably necessary to give the borrower a chance to substantially improve his situation. The loans shall bear interest at the rate of 5 per centum per annum and shall be made on such other terms and conditions as the Secretary shall prescribe. The loans shall be subject to approval by a special committee appointed by the Secretary to serve for the particular area as determined by the Secretary. Loans exceeding $50,000 shall also be approved by the Secretary. The committee shall consist of at least three members appointed by the Secretary from local persons having recognized knowledge of the livestock industry. The committee shall perform such additional functions under this section and section 1148a-4 of this title, including general direction of the servicing of the loans, as the Secretary may prescribe."

And also § 384.2 of the 1953 regulations of the Secretary of Agriculture regarding eligibility, as follows: See Federal Register § 384.2:

"Any person (partnership, corporation, or other business organization but not a commercial feed lot operator) who is an established producer and feeder of cattle, sheep, or goats, is eligible for a Special Livestock loan if he:

"(a) Is unable temporarily to obtain needed credit from commercial banks, cooperative lending agencies, or other responsible sources for the purpose of continuing his normal livestock operations.

"(b) Has a good record of operations. This means that the applicant has in the past carried on financially sound livestock operations, and has a reputation for honesty, integrity, and paying his debts.

(c) Has reasonable prospects for success. This means that the applicant has the resources, experience, and management ability, which, with the credit extended through a loan, will, under normal conditions enable him to continue in business, meet operating expenses, maintain or replace his capital assets, and retire his present indebtedness, as well as repay the loan made by the Government."

Also the 1955 amendment to the regulations. See 6 C.F.R. § 384.2a:

"384.2a. *Eligibility requirements for feeders of livestock.* The primary purpose of the special livestock loan program is to assist established livestock operators to maintain their productive livestock herds. Special livestock loans will be restricted to livestock producers, including those who may run a limited number of purchased feeders each year. Loans will not be made to finance strictly feeding operations. However, loans may be made to finance feeding operations, other than commercial feed lot operations, in those cases in which otherwise eligible applicants are able to provide with their own resouces the land necessary for providing adequate grazing and who produce substantially all of the feed required to carry the feeders to the finishing stage. In addition, because of the speculative nature of feeding operations, the planned operations must show an estimated net income which would make them sound for the borrower and safe for the Government. In such cases, the special livestock loan would provide only the funds required to purchase feeders and for operating expenses other than to pay rent or to make substantial feed purchases to carry the feeders to the finishing stage. Such loans may include funds for the finishing process of feeding out cattle in lots only in connection with feeders carried by the applicant during

the preceding grazing season and then only when it has been the applicant's practice to finish out his feeders for the market."

STATEMENT OF THE CASE

Pat Bell and Hazel Bell, makers of four promissory notes payable to the order of the United States of America, which were loans of the United States Department of Agriculture through the Farmers Home Administration on special livestock loans, Title 12, Section 1148a-2. "Authority for making loans to farmers and stockmen—Rates of interest, terms and conditions." The loans were made pursuant to authority of the Special Livestock Committee which under the Act were subject to approval by a Special Livestock Committee. The Committee approved the loan and the method of operations for the year 1956 for which the loan was made, which contemplated feeding the cattle, but then when the Committee was told by the State Representative of the Farmers Home Administration that they had no authority to authorize a loan that would "full feed" the cattle with the proceeds of the loan, the plan of operations was changed and additional loans were made with stipulations that they would be paid sooner than the maturity date of the original $32,000 loan. There was alleged to be a balance due on the loans of some $5,864.07 on the first loan and $2,757.35 on the last three loans following a forced sale of the cattle wherein the cattle were sold by appellants on instructions from the Loan Committee under instructions from the Farmers Home Administration prior to the due date of the note.

Following a pre-trial hearing and depositions of one

of the government officials of the Farmers Home Administration and the deposition of one of the defendants, Pat Bell, a hearing was had wherein the Court entered a judgment for the government for $5,864.07 with interest against Pat Bell and Hazel Bell and another judgment against Pat Bell alone for $2,757.35 together with interest. From this judgment the defendants appealed to the Court of Appeals for the Tenth Circuit.

Plaintiffs' complaint alleged that on September 22, 1955 and March 13, 1956, the defendants, Pat Bell and Hazel Bell, for value received and to evidence loans from the United States of America acting through the Administrator of the Farmers Home Administration made, executed and delivered the promissory notes to the plaintiff for the sum of $32,000 and $5,750, respectively. The first note was dated September 22, 1955 and was due December 31, 1956. The lessor note was executed March 13, 1956, and it was due October 1, 1956. That there was alleged to be due on this note $5,864.07 plus accrued interest pursuant to a certified statement of account.

The Second Cause of Action was against the defendant, Pat Bell, alone. This count alleged that on August 21, 1956 and September 25, 1956 the defendant, Pat Bell, for value received, and to evidence loans of the United States of America acting through the Administrator of the Farmers Home Administration made, executed and delivered to plaintiff two notes of $2,000 and $1,000 respectively payable as set forth in the notes. The $2,000 note was executed August 21, 1956 due October 1, 1956, and the

$1,000 note was executed September 25, 1956 and due December 31, 1956. Plaintiff then prayed judgment.

An Answer was filed where, as a second defense to the first and Second Causes of Action, the defendants stated that the notes upon which the action was based were given pursuant to a Special Livestock Loan Law contained in 42 U.S.C.A. 1855 (this was erroneous as the loan was pursuant to Title 12, Section 1148a-2); that the proceeds of these loans were used to purchase cattle and feed that the cattle purchased were mortgaged to the United States as security for the notes. The Answer went on to state that under the provisions of the law a local committee has jurisdiction to service the loan and to determine whether or not the foreclosure should be made.

The Answer alleged further that during the year 1956 the local committee was not desirous of foreclosing the loan which had been made to the defendants, but felt that due to the low price of livestock then prevailing, the defendants should be given further time to pay the loans. The Committee was wrongfully advised by the agents of the United States of America, the Farmers Home Administration, that the local Committee was without authoriy to extend the time of payment of the loan, and that acting on direction of the agent, the local Committee advised the defendants the loan would be foreclosed. The Committee required the defendants to sell their cattle which had been given as security for the loan at the market then prevailing, and if such wrongful advice had not been given to the local Committee, such Committee would have carried the loan for an additional length of time, and the

subsequent increase in cattle prices would have permitted the defendants to pay the loan in full; therefore, by reason of these facts, the defendants are not indebted to the plaintiff.

The defendants amended their Answer and set forth a third defense which in substance was that when the note for $32,000 was executed the loan was made under the applicable acts of Congress which provide for such loans, and that it was the agreement between the Loan Committee representing the United States Government that had approval of the loans, and the defendants that the plan of operations provided in substance that the loan would be made for $32,000 with the object in view of permitting the defendants to purchase 250 calves weighing approximately 350 pounds each, and that the cattle would weigh between 900 and 1,000 pounds each by the end of 1956, and with sales of existing cattle and with the provision that when the borrower wanted changes in the feed need the committee could approve additional loans up to $50,000 if the borrower saw fit to apply for such loans for feed or other needs to carry the cattle to December of 1956. Defendants state that this was the agreement and understanding at the time the $32,000 was borrowed; that the heifers and the 189 cattle would be sold in the spring of 1956 and when sold the funds applied on the loan and there would be available additional loans and funds within the $50,000 limit to provide feed for the balance of the cattle and permit carrying the same until December of 1956 on the land operated by the defendants at the time of the $32,000 loan. By way of further defense,

the defendants stated that in February of 1956 two field representatives of the Department of Agriculture at the State level came to the County Office of the local Department of Agriculture representative in Pawnee and advised the Loan Committee it was against the policy of the United States Government to permit a borrower to purchase feed for the cattle where the cattle had been bought with funds loaned to him, and the Loan Committee then decided to repudiate the plan of operations of the Farmers Home Administration who was administering the program. The representatives stated they would try to get the Farmers Home Administration in Washington to permit the defendants to put the cattle on grass and let them be carried sufficient time for the defendants to be rescued from their perilous situation. Also, the representatives at the State level advised the Local Committee that the plan of operations providing for feed finishing agreed on was illegal. The local representative of the Farmers Home Administration later processed a loan for $5,750 which also is the subject of the action.

A stipulation was entered into (R., p. 30). This stipulation in essence was one where the parties agreed to the facts as to the execution of the note and stated that prior to delivering the note for $32,000 application was made by the defendants on F.H.A. Form 197A and 910A. Paragraph C of the application showed there were on hand 189 calves, and that there were to be purchased 250 cows and one milk cow for a cost of $16,000. It was contemplated the proceeds of the loan would pay off some existing debts and furnish funds to operate on as set forth on

the application under "Cash Summary and Debt Repayment Schedule." A significant statement is made over the signature of Elbert E. Pace who was then the County Supervisor, a Federal employee, which statement is as follows:

> "This loan is made to cover 1956 operations, and overlaps a previous loan for 1955. The 55 loan is to be paid in full when 189 calves sold. He is to turn in all sales from 189 calves (less an amount determined by committee to meet some payments not eligible in SL loan). For this reason we are including practically all operating expenses in the loan. Loan funds will be budgeted.
>
> "We include funds to purchase 250 pullets now on farm but owned by his mother. These should provide some living expenses after they come into production, which will be about Nov. 1st.
>
> "We set up in plan to permit him to buy a milk cow for family use. It is understood that with consent of committee the plan should be flexible enough that with the consent of the committee to make changes to meet changing conditions, as weather & prices.
>
> "The plan is that the calves will weigh 900 pounds to 1,000 pounds by end of 56 and the price of 19¢ would be a sale value of 42,000.00 We have used only 35,000 to be conservative & allow for some losses, with reasonable good manage and no unusual bad luck there should be 5,000.00 and 7,000.00 more income than plan shows.
>
> "This loan is based upon the land presently operated with some purchased feed.

"It is contemplated that at a later date, and an appraisal of conditions will warrant to make an additional to place a number of calves on wheat pasture, on a grazing privilege basis."

This was dated September 20, 1955.

Stipulation included a document wherein the Special Livestock Loan Committee takes action and says as follows:

"The undersigned members of the Special Livestock Loan Committee hereby approve for the above-named applicant a Special Livestock loan, pursuant to Section 2(c) of Public Law 38, as amended, in the amount set forth below, subjject to the special conditions, if any, set forth below. In addition, we certify that the applicant's note for the amount set forth below had been delivered to the Farmers Home Administration and that all of the other requirements of pertinent regulations and laws have been complied with.

"Amount: $32,000.00.

/s/ Wilbur H. Davis
/s/ Dell Crocker
/s/ John Scheihing"

It was further stipulated on March 13, 1956, defendants, Pat Bell and Hazel Bell, delivered a second note for $5,750, and that prior to executing this note they made an application on F.H.A. Form 197A and 910A, copies of which were attached as Exhibits "E" and "F", and these are as follows. "Exhibit E" (R., p. 39) showed this was a revised plan, March 13, 1956. It will be noted on the third page, "Debt Repayment Schedule" accelerates the payment date to September of 1956. Additional information over the signature of Elbert E. Pace says:

"This loan is to put 100 head of steers on dry grass and cake immediately and 150 head after April 30th. There are 100 acres of unused grass available plus remnants in balance of pasture. There are 50 more calves purchased than originally planned."

The Committee approved the loan and special conditions were that the loan funds were to be placed on joint account with the Farmers Home Administration and disbursed as follows:

"Pasture rent to Wallace Moore when contract made and furnished between Pat Bell and Moore	$3500.00
Hay and cake to be purchased to complete feeding to grass	750.00
Fencing repairs	200.00
Fuel for feeding operations, etc., veterinarian fees, machinery repairs, etc.	800.00
Living Expenses	500.00"

It was further stipulated on August 21 that the $2,000 note by Pat Bell was executed and with it the application and action of the committee. These contained the conditions of this loan, and the last $1,000 loan was made, showing following a strike at the Wilson Packing Company resulting in slowing down of active cattle buying. Following the execution of the Stipulation, depositions were taken of Mr. Herman Bartell, who was the state level representative of the Farmers Home Administration of the Federal government and Mr. Pat Bell.

SUMMARY OF DEPOSITIONS OF HERMAN M. BARTELL.

The testimony consisted of that of Herman M. Bartell who testified in substance that he was Operaing Loan

Officer for the Farmers Home Administration, an agency of the United States Government. He knew Pat Bell since early '56. He first recalls meeting him February 29, 1956, at the County Office in Pawnee. Pat was considered a farmer-rancher, raising cattle. He stated he was familiar with the provisions for extending credit for Special Livestock Loans found in U.S.C.A., Title 12, Section 1148a-2. The provisions of the Act have heretofore been set out.

The function of Mr. Bartell was to work with County Supervisors who were also Federal agents in administering the Special Livestock Loan Program. His duties were seeing that the loans were made in accordance with the Farmers Home Administration procedures and authorities and in servicing the loans. He explained that the Special Livestock Loan Authority authorized that the approval of loans be vested in the County Committee, and the County Supervisor is charged with the responsibility of servicing and handling all loans with the Farmers Home Administration in his county. The County Supervisor is a Federal employee. Elliott Pace was the County Supervisor at Pawnee County.

He was familiar with the applications Pat Bell made for loans, and referring to the application of September 15, 1954, he had a record that this loan was approved by certification of the Committee. The payment date was contemplated to be December 31, 1956, and the note for $32,000 was signed by Pat and Hazel Bell. A mortgage was prepared.

He went on to explain that the authority primarily

vested in the Special Livestock Committee. He said the committees were not trained in the areas of field of credit or the details of credit; and, therefore, they were under the direction of the Farmers Home Administration from the standpoint of giving them counsel and guidance.

Under the Act of Congress, the Special Livestock Committee was given the authority by the Act of Congress to approve loans up to $50,000. Over $50,000 the loans should be approved by the Secretary of the Agriculture.

Bartell stated that on September 29, 1955, a letter was written to Pat Bell. In substance this letter was to the County Supervisor of Pawnee from John Anderson, the area supervisor, (for the Farmers Home Administration of the Federal government) returning the loan for further consideration. He says in the letter;

"1. Pat Bell in his statement dated December 23, 1954 shows his past operations averaged 140 steers, 100 cows and 400 ewes 400 ewes are equivalent to 80 head of cattle. Since the average for cattle would amount to 320 head, we would not consider bringing his cattle above that number.

"2. Part A of Form FHA-197A dated 9-20-55, does not show borrower to have any livestock on hand, but Part C shows he presently has 189 head on hand. Therefore the most cattle which could be considered purchasing with a new loan would be 131 head.

"3. Since it was agreed that at the time the two loans, amounting to $14,360 were made the steers would be sold and the loans paid on November 1, 1955, it would seem advisable that a new loan should not be considered until such time as the steers are

sold and the proceeds applied on all loans which the borrower owed in order to better determine the progress he makes in handling his cattle operations.

"4. We note that there are deposit slips in the file which evidence more than the loan proceeds being placed in supervised bank account. The records are not entirely clear as to why this was done. When sales are made sale proceeds should not be placed in supervised bank account. Generally speaking, we would expect the proceeds from the sale of all security to be applied on the loan and when borrower needs additional funds to make loans for such purposes.

"5. Experience has shown that a person cannot use as much for operating expenses as is invested in cattle and still be able to succeed. In this instance Mr. Bell wants $32,000 and expects to use $16,000 of it for operating expenses."

Written in pencil on the side of the letter is:

"This advice was not followed. New loans of $32,000 made Oct. 12, 1955 without knowledge of State Office. s/HMB"

He stated he learned this on February 21st, (1956) when he visited at the farm (Bell's) with Mr. Pace and Mr. Anderson and during that visit learned the $32,000 loan had been made. They were looking at livestock which had already been purchased with proceeds from this loan and found livestock in excess of what he knew of Mr. Bell having at the time. In this case the supervisor prepared the loan authorizations, submitted them to the National Finance Office with the note, and they issued the check, *and the committee legally and technically* did have the authority to do this. In his opinion the record shows that

the Committee approved the loan and the basic plan as as outlined in the exhibit and the record so states.

He went on to state, as to the language in the application "The plan will be flexible enough that with the consent of the Committee to meet changing conditions at to weather and prices." He stated the intent and purpose of the whole loan authority was to assist farmers during a drouth condition, and there had been a drouth in that area. There had been several years of below normal rainfall.

He then testified, regarding the authority of the committee, that the Special Livestock Loan Authority does not provide for feeding cattle as commonly termed in relation to a livestock program. The authority was based primarily utilizing pasture and farm-produced feeds. This was his opinion. (See regulation at page 6 of this brief.)

Bartell stated that in his opinion the second regula tion as read to him, would permit a man to finish feeding if that had been his practice.

In February of 1956 a new loan for $5,750 was made. This loan is bottomed on the application submitted March 13, 1956. The circumstances regarding this loan are set forth in a letter written by Bartell to the administrator, of the defendant, being a letter dated March 26, 1956, from the State Director at Stillwater to the Administrator at Washington. This letter is as follows:

"Administrator, Washing, D. C. March 26, 1956
State Director, Stillwater, Oklahoma
C41—Pat Bell, 42-59-245881, Special Livestock Loan

This borrower called your office by telephone and as a result Mr. Frank Pollard called this office on March 1, 1956, concerning the status of this account.

In September of 1955 Elbert E. Pace, County Supervisor, forwarded to this office the county file and loan docket for a subsequent Special Livestock loan of $32,000. We did not agree to the approval of this loan and are attaching hereto a copy of our letter which we wrote to Elbert E. Pace, County Supervisor, on September 29, 1955. The county file shows loan authorization dated September 26, 1955; copy of Certification by the County Committee dated September 26, 1955; and note for $32,000 which was due and payable December 31, 1956. The loan check in the amount of $32,000 was dated October 17, 1955. This loan was processed without the knowledge of this office even though we did not concur in making the loan as set out in our letter of September 29, 1955.

We are attaching hereto loan docket consisting of Form 910A, which has been approved in the amount of $5,750; promissory note dated March 13, 1956; and loan authorization in the amount of $5,750. In addition thereto we are attaching Form 197A dated September 14, 1955, and revised 197A dated March 13, 1956. There is also attached copy of memorandum dated March 14, 1956, from Elbert E. Pace, County Supervisor, relative to the proposed loan of $5,750. On February 21, 1956, Herman M. Bartell, Production Loan Officer, visited Pawnee County with John P. Anderson, Area Supervisor, and it was at that time we first learned that the $32,000 loan had been made. The circumstances relative to the handling of the $32,000 loan are as follows:

1. With the proceeds of this loan the borrower was allowed to purchase 397 head of steers and heifers for $21,548.89. Sixty-four head of these cattle were sold immediately for $2,854.95 leaving

333 head of these cattle which the borrower kept. The proceeds from the sale of the 64 head of cattle was placed in joint bank account and used for operating expenses.

2. At the time the $32,000 loan was made the borrower had on hand 189 head of heifers and steers which were supposed to have been sold in the fall of 1955 to fully repay all previous indebtedness to the Farmers Home Administration. These cattle were not sold.

3. During November 1955 the County Committee and the County Supervisor agreed to a feeding program on approximately 80 head of heifers of the 189 cattle on hand. In this connection they assured the owner of the Pawnee Grain Company that they would allow proceeds from the sale of heifers to be used to pay all feed bills. As a result the borrower purchased feed on credit which totaled $6,618.72. Of this amount $2,000 was paid from loan funds. The balance of $4,618.72 was paid from the proceeds of 79 heifers sold. The Farmers Home Administration received $6,914.34 from the sale of the 79 heifers and 14 steers which represents all sales since the $32,000 loan was made. There still remains $374.60 which was neither released to the feed company or paid on Farmers Home Administration loan. Commission and hauling accounts for $183.42. Total sales proceeds of 79 heifers and 14 steers was $12,091.08.

4. Through February 21, 1956, the borrower reported 18 cattle had died and 3 steers had either strayed or been stolen. On this same date Mr. Bartell and Mr. Anderson inspected the cattle and reported the borrower had on hand 408 head of steers and heifers. On March 5, 1956 the borrower reported 2 more head of cattle had died.

5. On February 21, 1956 when Mr. Bartell and Mr. Anderson were in the county office they learned the County Supervisor and the County Committee had made an agreement with the Pawnee Grain Company to furnish feed for Pat Bell to full feed cattle. At that time Mr. Bartell went to the Pawnee Grain Company and put them on notice that no further feed was to be charged to Pat Bell under the agreement, and that under no conditions would the Government be responsible for feed which Mr. Bell might purchase from them on credit after February 21, 1956. Mr. Bartell made no commitments concerning the feed bills which Mr. Bell already owed since he knew the Oklahoma Statutes provide that when feed is furnished with the knowledge and consent of the chattel mortgage holder the party furnishing such feed has a lien superior to the mortgage even though such feed was furnished after the mortgage had been filed. The $4,618.72 was released to pay the Pawnee Grain Company by the County Supervisor after February 21, 1956. This must have been done on or about March 5, 1956 since it was on March 5, 1956 that we received $4,677.66 which represented part of the proceeds of the sale of 14 steers and 48 heifers.

6. On February 29, 1956 when Mr. Bartell and Mr. Andersen met with the County Supervisor and the County Committee, Mr. Bartell pointed out that officials representing the Government should be very careful in making commitments and know they have authority to do so before commitments are made. Officials representing the Government should be in a position to carry out their agreements in order to keep good faith with the public as well as protect the interests of the Government. So far as we know at the present time no further commitments have been made.

7. Had the borrower sold the 189 head of steers as planned and had not been permitted to purchase more than the 250 head of steers and heifers set up in his plan at the time the $32,000 loan was made, it seems evident he would have had ample grass to provide for his operations. As the matter stands at the present time the borrower has neither feed nor ample grazing to carry 408 head of cattle which he now has on hand, and he now requests loan funds to lease additional grass at a cost of $3,500 in order to adequately provide for the cattle which he now has on hand.

8. The County Supervisor has allowed this borrower to carry on a very unorthodox program, and in doing so he has shifted his loan servicing responsibility by having the County Committee concur with him in all these loan servicing activities. Prior to February 29, 1956, we are quite sure the County Committee was not at all familiar with the policy or regulations for servicing of Special Livestock loans and went along with the County Supervisor and the borrower thinking they were acting in the best interests of the Government and for all concerned.

9. Your record will reflect that on May 11, 1954 an investigation report was made on Elbert Pace concerning his perfommance as a County Supervisor. It was then decided he should be given another chance. This case is concerte example of his inability and failure to carry out responsibilities of a County Supervisor. We do not see how it will be possible for him to carry on the duties required of a County Supervisor. The handling of this case has been so unsatisfactory that it has become well known over a wide area and is adversely affecting the public opinion as well as making it hard to administer our program in this area.

If it is at all possible we should like for you to institute action to relieve Mr. Pace of his duties as County Supervisor.

Also attached is the county file.
Attachments."

This new plan that this loan is to "Put 100 head of steers on dry grass and cake immediately and 150 head after April 20th. There are 100 acres of unused grass available plus remnants in balance of pasture. There are 50 more calves purchased than originally planned." Payment was scheduled for September, and all the cattle were to be sold. Mr. Bartell testified the chief difference was the debt repayment schedule.

The mortgage carrier a maturity date of the $32,000 loan as December 31, 1956 although the maturity date of the note was earlier.

The witness testified that Mr. Bell objected to having to sell the cattle in September of 1956, although the March 26, 1956 letter to the Administrator in Washington received a reply dated April 5, 1956 from H. C. Smith in Washington to the State Director, Mr. Bartell, wherein he says:

"Before the loan is closed, however, the borrower and the County Supervisor should understand that all livestock will be sold not later than September."

(This is interference by Washington with the local Committee.) In response to a question, as to whether or not Mr. Bell had any choice, Mr. Bartell testified:

"A. He was forced to agree with it to comply with the requirements of this $5,750.00 loan being advanced."

Bartell told this Committee that this had to be done. Mr. Bell's alternative was to seek another source of credit or sell the cattle. In this event, he would have had to sell them at a loss when they were not grown or fed up to full salability.

The following exchange took place between counsel and the witness (R., p. 91) He was asked if he were substituting his decision for the decision of Mr. Bell and the Committee, and he said that he was following directions from the National office as a condition of approval, which was the National office of the Farmers Home Administration.

He testified further:

"A.I would say again that the Farmers Home Administration had the right to withdraw the authority of the Committee if they felt they were not properly carrying out the intent of the Special Livestock program.

Q. Where did that authority come from, please, sir?

A. The authority was vested through the Secretary of Agriculture for appointment of the Committee, and upon recommendation by the Farmers Home Administration he could and did withdraw that authority."

At this point no records were produced or documents that would be the foundation for this statement.

He went on to tell about the next loans—the $2,000 loan on August 21, 1956, which was to buy feed, grain and protein to keep the cattle from shrinking until Bell

could arrange for a selling date. There had been a fire on part of his grazing land. About 5000 acres had burned. The date of this note was October 1, 1956, and it was secured by a mortgage. The application for this loan stated that this was to purchase protein feed to feed the cattle on grass for a period of approximately thirty days. Mr. Bell objected to selling his cattle at the end of thirty days when he signed the note. He objected to having to sell his cattle and pay the note ahead of December, 1956.

The trend of his testimony is interesting because in spite of the policy of Congress to aid and assist farmers when drouth had run up the price of feed and made marketing a difficult problem, the witness testified:

"A. We had determined that our loan was in jeopardy due to this unprofitable practice of buying high-priced feed for cattle."

The last loan, the $1,000 one, was to carry the cattle for another 14 days due to a strike at the Wilson plant.

Mr. Bell did have opportunity to buy some silage if the Government had seen fit to loan him the money to buy it.

Bartell went on to testify that the Government felt they were insecure when they learned the $32,000 loan had been made without the agreement of the Farmers Home Administration. In fact, apparently, also the feeling of insecurity existed at the time of the $5,750 loan.

Bartell testified the Committee had the basic authority to loan him money to carry him beyond December of 1956. Although he didn't know if anyone in the Farmers

Home Administration told the Committee they couldn't do it, he was sure the Committee got the opinion or knowledge that Farmers Home Administration was not in favor of making any further advances.

He stated he told Pat Bell it was contrary to F.H.A. policy to make additional and supplemental loans to full feed the cattle after they were taken off the grass, although he couldn't say where in the regulations or Act of Congress that policy is set out.

He testified as follows:

"Q. I have a letter signed by the Committee here. It is a statement by the Committee: 'We met with Mr. Bell and told him we had been advised by the F.H.A. representative they had decided to send trucks to pick up the cattle. This was at a time when cattle prices had reached their lowest point. Rather than cause trouble which would lead to litigation Mr. Bell reluctantly and voluntarily agreed to sell his cattle.' Now, are you familiar with that statement?

A. I am aware that the Government through the state level wanted the cattle sold, realizing that the only way Mr. Bell could keep them longer would be for the Farmers Home Administration to advance more funds for the purchase of feed.

Q. By reason of that, then, Pat Bell had no other choice but to sell his cattle at that time?

A. Right.

Q. And it amounted to a forced liquidation of his cattle?

A. Yes."

He went on to testify that he recalled talking to the

Committee when the feed bill amounted to approximately $2,500.00 at the Pawnee Grain Company, and he told the Committee and the Supervisor that the Government would not be responsible after about March 1st for any feed they might sell to Mr. Bell with the understanding that the Farmers Home Administration would release proceeds from the cattle sales to pay such a charge. He had gotten feed prior to making this $5,750 loan with the knowledge and consent of the County Committee. The witness stated he might have made a statement they were tending to make the Government or themselvves liable for this payment of feed.

Bartell testified that at the time the leased pasture caught fire Pat had between 370 and 400 head. They adanced him $3,500 out of the second loan to rent 1,600 acres. About 500 acres of that pasture burned. Government Counsel then reminded the witness of regulations of February 19, 1955, signed by the Administrator of the Department of Agriculture on the 15th of February, 1955.

Regarding the $32,000 loan, he testified that he felt Mr. Bell purchased more cattle than his available pasture resources would warrant even under normal conditions, and to keep them after they got into a situation where they had a short pasture and no feed in sight, except that which would have to be borrowed to purchase feed, would extend the risk and jeopardy beyond reasonable points.

The witness testified that it was his decision that he would not endorse or agree to any further credit beyond what had already been loaned.

This was done in spite of the fact the Local Committee, not the Farmers Home Administration, was the one who had authority to make the loan, or extend same.

PAT BELL

The only other witness who testified was Pat Bell, one of the defendants, who testified in substance that he had been in the cattle business thirty years.

In 1953 they had a drouth and it got worse over into 1954.

In 1954 he was an established rancher and livestock producer, and he felt he had a good record of operations.

He told about his original discussion in making the loan with the County Supervisor, and he told about finishing cattle, which was feeding them until they would grade good or choice under Federal grade on grain.

In 1955, when the loan ($32,000) was made he was producing stocker cattle, those that were to be sold to be finished.

The application of the $32,000 loan was prepared by Elbert Pace, who was the Supervisor at Pawnee. Regarding the part of the loan application that said, ". . . flexible enough that with the consent of the Committee to make changes to meet changing conditions as to weather and prices . . .", he explained this (R., p. 122). The County Supervisor, Elbert Pace, and himself had discussed the law and its ability to service his condition. They discussed the condition his range was in, and Mr. Pace suggested he get some information concerning the feelings of the

neighbors as to his past experience in feeding and what the purchase of feed was in his operation as an asset to it. This was brought in by letter. He discussed with the Supervisor the last paragraph of the regulations of February 19, 1955.

The arrangements set forth in his 1955 application were changed in the $5,750 loan, and he testified that this was about face as to his thought. The original plan was his program.

When he made the $5,750 loan with the accelerated payment, he had no other choice, and he objected to any acceleration of the payment date. He made objections to the Committee and to Mr. Bartell and to Mr. Pace.

In February of 1956 he sold some finished steers in Oklahoma City for 18¢ a pound, or close to it.

He testified that if he could have continued his own plan it would have consumed the grass that was on his ranch, and then he would have fed the cattle at the home ranch instead of leasing or buying the acreage at Yale, and under that line of operation he would have had the cattle ready for choice finished market in October, which, would have been around $27.00 per 100 pounds or 27¢ a pound. (They were sold for from 11 to 17¢ a pound.) He tried to get further with the cattle. In October he met with the Committee and John Anderson and told them that he had arrangements for 1,000 tons of silage that he could get to maintain these cattle through the winter if he could get funds to pay for it. The silage would have cost $10,000.

He did object to having to sell the cattle before December of 1956, and he made the objection to the three Committee men and John Anderson who was one of the State Representatives. Neither the Committee nor any representative gave him any alternative than to sell the cattle. Regarding this, he recalled he discussed this with the Committee, with John Anderson out of the room, and the chairman told him it was out of their hands; that the State office wanted to sell the cattle, and there wasn't anything they could do about it. These cattle were capable of grading choice when finished.

In the summer of 1956 he was advised by Mr. Anderson or Mr. Bartell that additional and supplemental loans could not be made after the cattle were taken off the grass without approval from Washington, and that credit could not be extended to him for the feeding of cattle.

The F.H.A. office told the Committee or Mr. Pace that Mr. Bell could not continue obtaining feed or assistance without a review at the State administrative level.

In August of 1955 he was running around 189 cattle. When the $32,000 loan was made he had some 900 to 1,000 acres. In addition to those acres he acquired a lease of 1600 acres at Yale, Oklahoma.

At page 136 he was asked if it was not under his original plan that he was going to buy around 250 cattle, but he actually bought around 325 cattle. He didn't consider it overloaded his range. The plan was not a range program, and he felt free under the loan plan to take care of these cattle and use the range, its ability, and the weather and its production.

When he was going to borrow another $10,000 in October of 1956 he proposed to sell enough cattle, so it wouldn't bring them over the $50,000 limit he had on the County level.

ARGUMENT

The pertinent part of Title 12, U.S.C.A. § 1148a-2 has already been set out heretofore in the fore part of this brief Analyzing the Act; we find that established producers and feeders of cattle who have a good record of operations but are unable temporarily to get the credit they need from recognized lenders and have a chance of working out of their difficulties with supplementary feeding may obtain loans from the Government. The loans are subject to approval of a Special Committee appointed by the Secretary for the particular area, as determined by the Secretary. The Committee consists of at least three members appointed by the Secretary from local persons having recognized knowledge of the livestock industry. This Committee performs additional functions, including general direction and servicing of the loans.

Without setting forth at this point the legislative history in our brief, we find it becomes important, and we will refer to the volumes of the U. S. Code Congressional and Administrative News which point out this legislation. See Volume 2, page 1867, which contains House Report No. 714, particularly the discussion beginning on page 1869 under the subject "The need for Emergency Credit." Then see the section pertaining to "Drouth and Cattle Prices," the analysis of the bill and the conference report, all of which are set forth in the legislative history

to the enactment of the statute. To repeat them here would unduly encumber this brief. This was a nation-wide plan as a matter of economic necessity.

We believe a study of the legislation shows it was the local committee that was to have the decision on whether or not to loan money, and whether or not to grant extensions, so long as they were generally within the scope of the act. This is borne out by a reference to the following case: *U.S.* v. *Wiley's Cove Ranch*, (5th Cir.) 295 F. 2d 436. The pertinent parts of which are:

> "Action by the United States to recover payments made by the Department of Agriculture, to a partnership engaged in farming and ranching, in the way of livestock feed under the Emergency Feed Program. The United States District Court for the Western District of Arkansas, John E. Miller, Chief Judge, 181 F. Supp. 371, granted summary judgment against the United States, and it appealed. The Court of Appeals, Vogel, Circuit Judge, held that the certification of eligibility of the partnership to receive the benefits, by a county committee of the Farmers Home Administration, was 'agency action by law committed to agency discretion' within the Administrative Procedure Act provision providing for judicial review of agency action except so far as it is by law committed to agency discretion, and that the certification could not be judicially reviewed in absence of fraud.
>
> 2. Agriculture, Key 3:
> "Certification of eligibility of partnership engaged in farming and ranching to receive benefits under Emergency Feed Program, by county committee of Farmers Home Administration, was 'agency action by law committed to agency discretion' within Administrative Procedure Act provision providing for judicial

review of agency action except so far as it is by law committed to agency discretion and certification could not be judicially reviewed in the absence of fraud."

3. Agriculture, Key 3:
" 'General supervision', within regulation that state directors of Farm Home Administration are responsible for notifying county supervisors for general supervision of 'this' agency's functions in receiving and handling applications for assistance, referred only to nondiscretionary or administerial functions of county committees of the Farmers Home Administration, and *state director could not review and correct error, if any, in committee's certification of* partnership for assistance under Emergency Feed Program. 12 U.S.C.A. § 1148a-2(d)."

In this case the United States sued a farming and ranching partnership for the cost of grain received by them through the action of the County Committee. The Farmers Home Administration State Director rejected the application of the ranchers for surplus grains and made demand for reimbursement for grains already given. The ranchers refused to refund the value, and suit was brought. The Opinion goes on to point out that the County Committee reviewed the applications and was given final authority, and the F.H.A. could not interfere. The Court stated that general supervision was under the particular jurisdiction of the F.H.A., as in our case, and refers only to nondiscretionary or ministerial functions. In this case the Court says:

"The essence of the government's position is that while the County Committee made its determination as to eligibility in complete good faith on its part as well

as on the part of the appellee, yet such determination was a mistaken one. The County Committee must have been functioning in a discretionary field. In view of the broad authority given the County Committee in certifying applicants, the Committee's special competence in so certifying, and the fact that no fraud has been alleged, we hold with the District Court that the certificate of appellee's eligibility to receive benefits under the Emergency Feed Program constituted 'agency action by law committed to agency discretion', hence was not judicially reviewable, and that the appellee's motion for summary judgment was properly granted."

Applying the principles of this case to the case at bar, we find a review of all of the applications and certifications by the Committee approved the mode of operations to the cattle loan and the evidence showed that it only changed its position when forced to do so by the State Director, resulting in the destruction of the Committee's authority in three areas. First it changed Bell's entire plan, second it required acceleration of the payment date, third it required an early sale of the cattle and a loss to the Bells. The trial judge condoned this usurption of power by the State Director and F.H.A.

The Government contends and the court found that the 189 heifers and steers were to be sold in the fall of 1955. We submit under the plan there is no such requirement in the plan of the loan of September 15, 1955.

The Committee apparently under its authority to approve loans and grant extensions did not require the sale of all these cattle. The sale is mentioned but no time specified.

The Application says:

"The 55 loan is to be paid in full when the 189 calves sold."

There is no date set for the sale, although the note was due 11-1-5. Obviously the Committee chose not to refuse to keep the 189 cattle (yearlings to be sold) as the state Director's letter says, par. 3:

"As the County Committee and County Supervisor agreed to a feeding program on approximately 80 head of heifers of the 189 cattle on hand."

The Committee was exercising its authority under the law—and following a plan which "with the consent" of the Committee was "flexible" to meet changing conditions i. e., "weather" and "prices". This included feeding the cattle.

The action of the State Direcor and the Farmers Home Administration removed and destroyed "flexibility" by hamstringing the operation.

The Letter telling how Bartell, the F.H.A. representative cut off Pat Bell's credit for feed by telling the Pawnee Grain Company that under no conditions would the Government be responsible for feed which Mr. Bell might purchase after February 21, 1956. Arrangements had been made by the local Committee who under the Act of Congress was selected for its knowhow, to maintain the balance of the 189 cattle but was shut off by Bartell causing the loss to both the Government and Bell.

This is another example of the State level Federal

people overruling the Committee. The Committee chose to permit Bell to buy more than 250 steers and heifers (calves). The Committee chose to let him have credit for feeding the 189 cattle grazed the previous year, less some sold removing them from the grazing program. This would have permitted Bell to graze the light calves on land he then had without having to rent the 1600 acres.

The regulations 384.2-a permitted finished feeding with feeders carried from the preceding grazing season.

The Committee therefore under the Act of Congress was exercising its knowledge of local conditions and the industry, but was not permitted to function by the Federal F.H.A. state level representatives who were creating technicalities and obstacles to congressional intent to aid cattlemen.

(2) In spite of the fact the basic loan of $32,000 was not due until December 31, 1956 and the loan plan (R., p. 36) says:

> "The plan is that the calves would weigh 900 pounds to 1000 pounds at the end of 1956 (not October) and the price of 19¢ would be a sale value of $42,000 for 250 cattle) * * *"

We find that the F.H.A. and State Director insisted on an early sale date of all the cattle where everything is to be paid in September of 1956. This is another example of the Committee being hamstrung and prevented from exercising its judgment. Instead Bartell tells us that it was his opinion and the National office opinion that September would be the best time to sell the cattle substituting his and Federal F.H.A. judgment for that of the Committee.

This is borne out by referring to the letter where F.H.A. Administrator Smith writes to State Director from Washington April 5, 1956, saying "the borrower and County Supervisor should understand that all livestock will be sold not later than September—." This is contrary to the intent of the Act to give the local Committee general direction of servicing of loans.

The original plan of carrying the 189 yearlings beyond the November 1, 1955, date thus obviously in the contemplation and judgment of the Committee necessitated additional loans for feeding and maintaining the cattle.

This plan was clear from a complete analysis by the Committee but was destroyed by the State Director. The feeding was necessary either through a continued credit at the local grain merchants or additional loans. Where the Government destroyed the credit it wrecked the plan.

The Trial Court concluded that Bell violated the plan by purchasing 300 head of cattle instead of 250. Actually 500 calves could have been purchased. The conclusion was erroneous as 50 extra calves purchased was not a violation. It met the approval of the Committee as they obviously paid for the cattle.

Further, in support of the Bells' position, it may be said that the Bells entered into the plan, which is the contract, based upon Mr. Bell's conversations with the local supervisor and upon his reliance on the main spoke of the wheel which was the power of the local committee to grant renewals, loans, extensions, and additional loans for feed unhampered by bureaucratic officials at the State level and the Farm Home Administration office.

We submit petitioners should be permitted to rely on the Act of Congress giving the Committee the right of approval not only for the loan up to $50,000 but for additional credit and extensions thereof.

Apparently, however, both Courts below didn't think so.

The legislative history is set out in Volume 2 of U. S. Congressional and Administrative News at page 1868. This bill points out in its general statement that the purpose of the bill is to assist farmers, ranchers and stockmen to meet the emergency resulting from the drouth situation prevalent in the south central area of the United States pointing out there were 40 counties in Oklahoma in the disaster area. The legislative history points out the need for emergency credit.

The legislative history says:

> "One of the first official acts of the committee after the convening of the 83d Congress was the appointment of a Special Livestock Subcommittee to study and watch this situation. On February 20, 1953 that subcommittee issued a statement in which it pointed out the possible need of emergency credit from governmental sources to prevent forced marketing of cattle before they are ready and to prevent the liquidation of foundation herds."

In the legislative history it is said:

> "It is contemplated that the procedural work incident to disbursing, servicing, and collecting the loans will be handled by the Farmers' Home Administration which has finance offices serving all areas of the country and representatives covering every agricultural

county. Approval of these loans and the supervision and direction of servicing them would, however, be by special livestock loan committees to be designated by the Secretary and any loan in excess of a total of $50,000 would have to be approved, in addition, by the Secretary of Agriculture or his designated representative."

It will be particularly noted that the analysis by the Committee says: "Approval of these loans and the supervision and direction of servicing them would, however, be by special livestock loan committees to be designated by the Secretary * * *." It also says an exception might be made where part of the proceeds of the loan might be needed to pay bills connected with current operations such as feed bills, * * *. We, thus, argue that the effect and intent of Congress was to permit feeding of cattle in a situation such as we have in this case.

The legislative history shows that it was asked that the act be administered by others than the Farm Home Administration because of its past history to supervise. The class of people that were using the loan as contemplated by the Special Livestock Act did not need supervision. They needed capital. Because of convenience Congress went ahead and used the Farm Home Administration but restricted this organization from supervision, as shown by the Act.

A committee who knows the livestock industry, as the law requires, would know that it would take more feed than was set up in the plan. Without flexibility, it would be impossible to start in October of 1955 with a

350 lb. calf and take him through December of 1956 with only 1,000 to 1,100 acres upon which to run the cattle. This is what is meant by the committee's statement in the application "less an amount determined by the committee to meet some payments not eligible in the special livestock loan." It was impossible to estimate what this job could be done for because of the changing weather conditions because in 1956 the growth of vegetation was small, and, therefore, more feed would have to be purchased.

We submit that the F.H.A. paralyzed the committee contrary to the law which asks that three local persons knowing the livestock industry function as a committee. Feeding and finishing cattle is a major part of the cattle industry, and since this was paralyzed the committee was so tied that they could not function according to their knowledge and according to the intent of Congress.

In the legislative history the Senate said it was not necessary to put in the law the provisions as to renewal because they were implied. When the Department of Agriculture stated that the borrower could not ask for more time, if necessary, the department violated the intent of Congress.

We think the Court has overlooked three rather important decisions, one by the Tenth Circuit, *United States of America* v. *Charles M. Dunning Construction Company*, 223 F. 2d 723:

"5. Constitutional Law, Key 70(1), 77

"Neither judicial nor executive branch of government may enact or amend legislation."

In the Opinion the Court says on page 727:

> "It is our view that if there is a conflict between Section 3 of the Act and Paragraphs 204 and 307 of the Executive Order 9786, the latter are invalid because they clearly contravene the clear meaning of Section 3 of the Act. Neither the judicial nor executive branch of the Government may enact or amend legislation. * * *"

We feel a very strong case from the Eighth Circuit supports our contention. See *United States of America* v. *Thomas J. Maxwell,* (USCA 8th Cir., 1960), 278 F. 2d. 206:

> "Actions by producer to set aside determination by state stabilization and conservative committee terminating acreage and conservation reserve agreements and ordering forfeiture of payments thereunder. The United States counterclaimed for civil penalties. The United States District Court for the Northern District of Iowa, Axel J. Beck, J., 173 F.Supp. 75, rendered judgment for plaintiff and the United States appealed. The Court of Appeals, Van Oosterhout, Circuit Judge, held that evidence sustained the trial court's findings that producer's violations were trivial and that they did not defeat or substantially impair purposes of the contracts but that court did not have authority to order that contract benefits be paid.
>
> Judgments modified."

"3. Agriculture, Key 3

The legislative intent as expressed in provisions of the Soil Bank Act was that there would be no forfeiture of contract payments unless there was violation of such substantial nature as to warrant termination of contract and that termination was authorized only when violation was such as to defeat or substantially impair purposes of contract. Soil Bank Act.

§§ 101 et seq., 103-106, 103(a) (i), 107-113, 107(d) 7 U.S.C.A. §§ 1801 et seq., 1821-1824, 1821(a) (i), 1831-1837, 1831(d)."

"5. Administrative Law and Procedure, Key 390
Statutes, Key 219

Regulations are entitled to consideration in construing an ambiguous statute but a regulation, to the extent that it is in direct variance with unambiguous statutory provision, is clearly void."

"8. Agriculture, Key 3

It was congressional intent that penalty provisions of Soil Bank Act be applied only in cases of substantial violations defeating or substantially impairing purposes of acreage reserve and conservation reserve contracts. Soil Bank Act, §§ 102, 123, 7 U.S.C.A. § 1801, 1811."

The Court in its Opinion says (page 210):

"It is entirely true that the Act authorizes the Secretary to promulgate regulations he deems necessary to carry out the provisions of the Act. Section 1812. The Secretary did set up Regulations 485.286 pertaining to grazing the A. R. This regulation provides for the forfeiture of the entire contract benefits in event that the grazing was knowing or wilful or the result of gross negligence, without any reference to the substantiality of the violation. Regulation 485.294 similarly provides for the forfeiture of C. R. benefits for grazing violations. Regulation 485.280 provides that any violation which the State Committee determines requires a forfeiture of all payments shall be regarded as a violation which warrants the termination of the contract.

> [4, 5] Promulgation of regulations to aid in the carrying out of a statutory program is necessary and desirable. We have no quarrel with the authorities holding that regulations authorized by and consistent with statutes are binding and that such regulations prescribed by an administrative authority are entitled to great weight. It is established law that legislative power rests in Congress and that the will of Congress as unambiguously expressed in a properly enacted statute cannot be amended or altered by regulation. Regulations are entitled to consideration in construing an ambiguous statute. However, a regulation to the extent it is in direct variance with an unambiguous statutory provision is clearly void. Helvering v. Oregon Mutual Life Ins. Co., 311 U.S. 267, 61 S.Ct. 207, 85 L.Ed. 180; Manhattan General Equipment Co. v. Commissioner, 297 U.S. 129, 56 S.Ct. 397, 80 L.Ed. 528; United States v. United Verde Copper Co., 196 U.S. 207, 25 S.Ct. 222, 19 L. Ed. 449; Boykin v. Commissioner, 8 Cir., 260 F.2d 249; 73 C.J.S. Public Administrative Bodies and Procedure § 94, pp. 414-415."

In this case a State committee terminated the acreage agreements ordering forfeiture of payments for a farmer where certain of his horses or colts by mistake got into an area that had been withdrawn from production under the Soil Bank Act.

We submit the law asks that the local persons consisting of members of the Committee know the livestock industry.

This was true in the case of *U. S.* v. *Wylie's Cove Ranch* case, *supra.* The law required that this Committee function, feeding and finishing cattle is a major part of

the cattle industry, and if this is paralyzed, as it was in this case, the hands of the committee are tied so they cannot function according to their knowledge and according to the law and intent of Congress. Buying more cattle than 250 calves is a normal procedure for an operator when putting together a group of calves in the cost range, as was evidenced in this case. The rancher keeps them for a short time then sells and shapes up the cattle, eliminating those who will not finish to edible beef and leave him cattle he wishes to keep for long-range operation. The flexibility must exist or the law is defeated. Regulation 384-2a of 6 C.F.R., we believe, was intended to take care of an operator who has not a bankable operation.

In the present case part of the money set up for the 250 calves was used to maintain a part of the 89 cattle, and the fact the committee could not act as they interpreted the law under the restrictive directions of the Oklahoma City office caused the feed shortage. The plan contemplated an increase of 600 lbs. gained from the 350 lb. calves purchased to the 950 lb. cattle at the selling price. Getting a gain such as this requires what is known in the cattle industry as "double winter." This means feeding extra grain and supplementary feeding during the winter and then feed on grass. If the grass becomes dry, then the supplementary feeding is necessary and then feed from September to December, which would cost from $50 to $75 per head, depending on whether prices would warrant heavy concentrates to finish the cattle. Using these cost figures, $50 per head would be $12,500 feed cost and only $8,000 was set up in the plan. Seventy-five dollars a head would be $18,750. This was agreed to by the com-

mittee in the plan where the word "flexible" as to weather and prices was used.

A strong point is found in the contract or loan statement signed by Supervisor Elbert E. Pace. This is found at page 5 of our brief. It says:

> "We have used only $35,000 to be conservative and allow for some losses, etc."

Yet the loan was only $32,000. We submit that the Committee and the supervisor contemplated loaning additional funds as needed to meet flexible conditions of adversity such as weather, drought, falling market and other perils. They intended to help even with local credit. All of this was destroyed by FHA.

We feel the action of the Court and the action of the state level Federal officers places the approval and supervision of the loans under the direction of the Farm Home Administration and takes it away from the Special Livestock Loan Committee. This, we believe defeats the purpose of the Act of Congress.

Respectfully submitted,

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APPENDIX (A)

PAT BELL and HAZEL BELL, Appellants,

v.

UNITED STATES OF AMERICA
Appellee.

No. 9106.

United States Court of Appeals
Tenth Circuit.

June 30, 1967.

Rehearing Denied Aug. 17, 1967.

Action by United States to recover on notes executed by farmers under Special Livestock Loan Act. From a judgment of the United States District Court for the Northern District of Oklahoma, Allen E. Barrow, Chief Judge, 259 F. Supp. 602, the defendants appealed. The Court of appeals, Hill, Circuit Judge, held, inter alia, that under regulation promulgated by administrator of the Farmers Home Administration acting for the Secretary of Agriculture under the Act relating to eligibilty of requirements for feeders and livestock the Farmers Home Administration acted properly in advising local committee that farmers could not use loan funds to full-feed their cattle, especially where plans set out in farmers' application for loan did not mention full-feeding any cattle.

Affirmed.

1. Stipulations, Key 14(1), 18(1)

In an action by United States to recover on notes executed by farmers pursuant to Special Livestock Loan Act, farmers' stipulation in trial court that there remained unpaid on notes certain sum was not ambiguous and hence

judgment entered thereon was not excessive where farmers had received earlier notes, and in applications for notes sued out farmers acknowledged prior notes and amounts due on prior notes were included in total balance due. Act of July 14, 1953, 67 Stat. 149.

2. United States, Key 53(7)

Under regulation promulgated by administrator of the Farmers Home Administration acting for the Secretary of Agriculture under the Special Livestock Loan Act relating to eligibility of requirements for feeders and livestock the Farmers Home Administration acted properly in advising local committee that farmers could not use loan funds to full-feed their cattle, especially where plans set out in farmers' application for loan did not mention full-feeding any cattle. Act of July 14, 1953, 67 Stat. 149.

3. United States, Key 53(7)

Where farmers applying for second loan under Special Livestock Loan Act set out in their application that repayment date was September 1956, and that they would at that time sell all their cattle, while previous loan was due to be repaid December 31, 1956, the Farmers Home Administration did not force the farmers to accelerate the date of sale of the cattle, "wrecking" farmers' plan, since farmers were not compelled to apply for second loan, and the government did not wrongfully force the farmers into applying for the second loan. Act of July 14, 1953, 67 Stat. 149.

4. United States, Key 53(7)

Farmers' last three notes for loan under Special Live-

stock Loan Act were not executed under business necessity or compulsion so as to render the notes involuntary and excuse the farmers from liability on ground that county committee had approved a plan whereby farmers could full-feed their cattle, when state office of Farmers Home Administration indicated that loan funds could not be so used thereby compelling farmers to apply for the last three loans to obtain money for feed, where the government did only what it legally was required to do, and no wrongful pressure was applied. Act of July 14, 1953, 67 Stat. 149.

Robert J. Woolsey, of Farmer, Woolsey, Flippo & Bailey, Tulsa, Okl., for appellants.

Sam E. Taylor, Asst. U.S. Atty. (Lawrence A. McSoud, U. S. Atty., on the brief), for appellee.

Before LEWIS, BREITENSTEIN and HILL, Circuit Judges.

HILL, Circuit Judge.

This civil action was brought by the United States for a money judgment on four separate promissory notes given by the appellants to the Farmers Home Administration in consideration of that agency's loaning appellants money pursuant to the Special Livestock Loan Act. The two notes that were executed first in point of time were signed by both appellants and the last two were signed by Pat Bell alone. The trial court entered judgment for the United States and against both appellants in the amount of the principal, $5,864.07, and accrued interest, $2,635.52, remaining unpaid on the first two notes and

against Pat Bell alone in the amount of the principal, $2,757.35, and accrued interest, $1,259.75, remaining unpaid on the last two notes. The Bells appeal from that judgment.

The Special Livestock Loan statute, 67 Stat. 149(c) (1953), provided a method whereby money could be loaned by the United States to certain "established producers and feeders of cattle, sheep, and goats * * * who have a good record of operations, but are unable temporarily to get the credit they need from recognized lenders and have a reasonable chance of working out of their difficulties with supplementary financing." Such loans were to be made with the approval of special local committees appointed by the Secretary of Agriculture. The committees were also directed to perform "such additional functions under this Act * * * including general direction of the servicing of the loans, as the Secretary may prescribe."

In September of 1955, by written application, appellants applied for a loan of $32,000.00. In that application appellants recognized a prior and outstanding loan made by the government to appellants, which was secured by 189 head of cattle then owned by them. The application states that the purpose of the $32,000.00 loan is to cover 1956 operations; that the loan "overlaps" a previous 1955 loan, which loan will be paid in full when the 189 calves are sold; that "practically all" operating expenses were included in the loan; that the plan should be flexible enough to meet changing conditions, such as weather and prices; that the loan was based upon land presently operated by appellants "with some purchased feed;" that at

a later date an additional loan might be made to place a number of calves on wheat pasture on a grazing privilege basis; and that appellants planned to use $16,000.00 of the loan proceeds to purchase 250 head of cows.

The local county loan committee approved the loan and certified that appellants' note for $32,000.00 had been received and delivered to the Farmers Home Administration and that all other pertinent requirements and regulations had been met.

The application was reviewed by personnel in the Oklahoma State Office of the Farmers Home Administration, who returned it to the County Supervisor. The State Office criticized several aspects of appellants' plan and recommended that the local committee give further consideration to the application. The local committee proceeded to process the loan through the National Finance Office. From the proceeds of the $32,000.00 loan, $21,548.89 was used to purchase 397 head of steers and heifers. Sixty-four head of these cattle were sold immediately and the money from that sale was placed in a bank and used for operating expenses. A portion of the loan funds was used to pay a local feed dealer and the feed purchased was, with the knowledge and approval of the local committee, being used to full-feed approximately 80 of the 189 head of cattle appellants had originally owned. In February of 1956, the State Office of the Farmers Home Administration learned that appellants had received the loan and that they were using part of the money to full-feed some of their cattle. Representatives of the Farmers Home Administration at the state level thereupon advised the local

committee that this method of feeding was violative of applicable federal regulations and the dealer from whom appellants had been getting their feed was informed that the government would not be responsible for any feed purchased by appellants on credit after February 21, 1956.

In the summer of 1956, appellants applied for and secured a new loan for $5,750.00 and both appellants executed the second promissory note to the government in that amount. This money was to be used by appellants to lease pasture upon which to graze their cattle. Subsequently, a portion of the leased premises burned and appellant Pat Bell thereafter, in August and September, 1956, applied for and received two additional loans from the government of $2,000.00 and $1,000.00, respectively, giving his promissory notes therefor. In October, 1956, appellants sold their cattle and applied the proceeds of the sale to their indebtedness to the appelle. This action was brought May 28, 1964, to rcover the balance remaining unpaid on the notes. Appellants have admitted the execution and delivery of the notes.

[1] Appellants have three contentions on appeal. The first concerns the amount of the judgment entered against them. Appellants stipulated in the trial court that there remained unpaid on the notes signed by both of them a balance of $5,864.07 and on the notes signed by Pat Bell alone $2,757.35 and the court entered judgment accordingly. Appellants now contend the stipulation is ambiguous, that they inadvertently or mistakenly entered into it and that it is inconsistent on its face. The stipulation states that there is an unpaid balance on the notes

as reflected in exhibit "K", a certified statement of account. Exhibit "K" lists each of the four loans, the amounts advanced by the government, the amount of repayment made by the Bells and the unpaid balance. The total amount advanced by these four loans, plus interest, is $43,512.25. The certification reflects that the Bells have repaid $40,758.20. Thus, appellants contend, the judgment is excessive.

In this connection, the government points out that the Bells had, before the $32,000.00 loan, received earlier loans from the government and had given notes therefor. In the applications for both the $32,000.00 and the $5,750.00 loans, the Bells acknowledge these prior notes. When the county committee prepared statements at the time Pat Bell received the last two loans, for $2,000.00 and $1,000.00, the amounts due on the prior notes were included in the total balance due; and in the statement prepared at the time Pat Bell received the $2,000.00 loan, the committee indicated that the amount due on these earlier notes was $3,982.23, plus interest. The earlier notes were accordingly paid from the proceeds of the sale of appellants' cattle. This is a complete answer to their attack on their stipulation and the amount of the judgment entered below.

Appellants next contend that the local committee had proper authority to permit appellants to use loan proceeds to full-feed some of their cattle and that the Farmers Home Administration wrongfully advised the committee that it had no such authority. The Special Livestock Loan Act, 67 Stat. 149(c) (1953), provides that loans shall be made subject to the approval of the local special commit-

tee and also that "The loans shall bear interest at the rate of 5 per centum per annum and shall be made on such other terms and conditions as the Secretary shall prescribe." In 6 C.F.R. § 384.2a the Administrator of the Farmers Home Administration, acting for the Secretary, issued a regulation which established certain "terms and conditions" upon which the loans would be granted.[1]

Appellants argue that this regulation permitted them to full-feed any of the 189 head they owned before the $32,000.00 loan was obtained; that the local committee was correct in permitting them to use loan funds to full-feed 80 of the 189 head; that the operation was properly being carried out according to the local committee-approved plan; that the feeding was necessary either through continued credit at the local grain dealers or additional loans; and, that the Farmers Home Administration wrongfully overruled the county committee and "wrecked" their plan.

[2] We think the Farmers Home Administration acted properly in advising the local committee that appel-

[1] "§ 384.2a *Eligibility requirements for feeders of livestock.* The primary purpose of the special livestock loan program is to assist established livestock operators to maintain their productive livestock herds. Special livestock loans will be restricted to livestock producers, including those who may run a limited number of purchased feeders each year. Loans will not be made to finance strictly feeding operations. However, loans may be made to finance feeding operations, other than commercial feed lot operations, in those cases in which otherwise eligible applicants are able to provide with their own resources the land necessary for providing adequate grazing and who produce substantially all of the feed required to carry the feeders to the finishing stage. In addition, because of the speculative nature of feeding operations, the planned operations must show an estimated net income which would make them sound for the borrower and safe for the Government. In such cases, the special livestock loan would provide only the funds required to purchase feeders and for operating expenses other than to pay rent or to make substantial feed purchases to carry the feeders to the finishing stage. Such loans may include funds for the finishing process of feeding out cattle in lots only in connection with feeders carried by the applicant during the preceding grazing season and then only when it had been the applicant's practice to finish out his feeders for the market."

lants could not use loan funds to full-feed their cattle. The regulation expressly provides that "loans may be made to finance feeding operations, other than commercial feed lot operations, in those cases in which otherwise eligible applicants are able to provide with their own resources the land necessary for providing adequate grazing and who produce substantially all of the feed required to carry the feeders to the finishing stage. * * * In such cases, the special livestock loan would provide only the funds required to purchase feeders and for operating expenses other than to pay rent or to make substantial feed purchases to carry the feeders to the finishing stage." The regulation further provides that "Such loans may include funds for the finishing process of feeding out cattle in lots only in connection with feeders carried by the applicant during the preceding grazing season and then only when it has been the applicant's practice to finish out his feeders for the market." We think this regulation does prohibit loan funds being used to full-feed cattle, even those cattle "carried by the applicant during the preceding grazing season."

In addition, the government points out that the plan set out in appellants' application for the $32,000.00 loan does not mention full-feeding any cattle; however, $8,309.00 of the loan was set aside for feed, and this sum had been spent by appellants—$5,283.79 for feed and $3,025.32 for additional cattle—before the local committee was advised of 6 C.F.R. § 384.2a. We think the trial judge was correct when he said of appellants: "Their precarious situation and financial embarrassment were not

the results of any coercive acts of the Government, but the result of their own actions in buying more cattle than their land and resources would support."

[3] When appellants applied for the second loan (of $5,750.00) they set out in their application that the repayment date was September, 1956, and that they would at that time sell all their cattle. The $32,000.00 loan was due to be repaid December 31, 1956. Appellants now contend that the Farmers Home Administration forced them to accelerate the date of sale of the cattle and that this accelerated date was contrary to the judgment of the local committee. This argument avails appellants nothing. They were not compelled to apply for a second loan. We have already pointed out that the government did not wrongfully force appellants into applying for the second loan by by "wrecking" their plan.

[4] The final contention is that the last three notes were executed under such circumstances of business necessity or compulsion as will render the notes involuntary and excuse appellants from being liable on them. Appellants say that the county Committee approved a plan whereby they could full-feed their cattle, then the state office of the Farmers Home Administration indicated that the loan funds could not be so used, thereby compelling appellants to apply for the last three loans to obtain money for feed. There was no economic duress. The government did only what it legally was required to do. No wrongful pressure was applied to appellants. As the Eighth Circuit said in a case in which the plaintiff was asserting economic duress, "The assertion of duress must

be proven by evidence that the duress resulted from defendant's wrongful and oppressive conduct and not by plaintiff's necessities."[2]

Affirmed.

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[2] W. R. Grimshaw Company v. Nevil C. Withrow Company, 8 Cir., 248 F.2d 896, 904, cert. denied, 356 U.S. 912, 78 S.Ct. 669, 2 L.Ed.2d 585; See also Kohen v. H. S. Crocker Co., 5 Cir., 260 F.2d 790.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 821

PAT BELL AND HAZEL BELL, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The United States brought this action to recover the unpaid balance and accrued interest on four promissory notes evidencing petitioners' indebtedness to the Farmers Home Administration for four loans made under the Special Livestock Loan Act (67 Stat. 149). The trial court entered judgment against both petitioners on two of the notes, in the amount of $8,497.59, and against petitioner Pat Bell on the two other notes, in the amount of $4,017.10 (259 F. Supp. 602). The court of appeals affirmed, and denied a timely motion for rehearing (380 F. 2d 682).

1. The Special Livestock Loan Act, enacted in 1953, authorized the Secretary of Agriculture to lend money to "established producers and feeders of cattle * * *

who have a good record of operations, but are unable temporarily to get the credit they need from recognized lenders and have a reasonable chance of working out their difficulties with supplementary financing." The purpose of these loans was "to assist farmers, ranchers, and stockmen to meet the emergency resulting from the drought situation now prevalent in the south-central area of the United States." H. Rep. No. 714, 83d Cong., 1st Sess., p. 2. The loans were to bear interest at the rate of 5 percent per year and were to be made on "such other terms and conditions as the Secretary shall prescribe." The Act also provided that the loans were to be approved by special committees appointed by the Secretary of Agriculture from local persons who were familiar with the livestock industry. These committees were also to perform "such additional functions * * * including general direction of the servicing of the loans, as the Secretary may prescribe" (67 Stat. 149).

The authority to make loans under the Special Livestock Loan Act, as originally passed, was for a period of two years. This authority was extended by subsequent amendments[1] and finally expired on December 31, 1961.

2. Petitioners, husband and wife, are cattle producers in Pawnee, Oklahoma. The first loan involved in this litigation was made to petitioners in September 1955, in the amount of $32,000, and was due in December 1956. At the time, petitioners had an unpaid balance of about $16,000 on an earlier loan from the

[1] 69 Stat. 366; 72 Stat. 357; 75 Stat. 220.

Farmers Home Administration due in November 1955. Petitioners' loan application, which set out the purposes for which the money was to be used, provided that petitioners would use $16,000 to purchase 250 head of cattle; that the remainder of the loan would cover "practically all" operating expenses for 1956; and that petitioners would sell the 189 head of cattle that they already owned and apply the proceeds in full payment of the previous loan from the Farmers Home Administration. The application further provided that the amount of the loan was based upon the use of land presently operated, plus some purchased feed, and that at a later date an additional loan might be made so that a number of calves could be placed on wheat pasture (Pet. App. iv–v; Pet. 12). The loan was approved by the County Committee, notwithstanding the objections of the area supervisor for the Farmers Home Administration that petitioners planned to purchase an excessive number of cattle in view of their past operations and that no new loans should be made until after the existent stock was sold and the proceeds applied on the prior loan (Pet. 16–17).

At the time petitioners obtained the loan, they were operating 900 to 1,000 acres, which would only support approximately 100 head of cattle (259 F. Supp. at 603). With the proceeds of the loan they purchased approximately 333 head of cattle for about $20,000, instead of 250 head for $16,000 as set forth in their loan application (Pet. App. v, 259 F. Supp. at 603). Furthermore, they retained the 189 head of cattle which were to have been sold in the fall of 1955

to repay the earlier loan. Since they did not raise the feed necessary to provide all of the food for their cattle, petitioners used a portion of the loan money to purchase feed to "full-feed" approximately 80 head of the cattle they had originally owned. In February 1956, the State office of the Farmers Home Administration learned that petitioners were using loan proceeds to full-feed some of their cattle and advised the County Committee that this method of feeding was prohibited by the regulations (Pet. App. v–vi).

In March 1956, petitioners received a second loan of $5,750 to enable them to lease a wheat pasture upon which to graze some of their cattle. Petitioners' application for this loan contained a provision that they would sell their cattle in September 1956 and satisfy both loans. Subsequently, in the summer of 1956, a portion of the leased premises was destroyed by fire, and in order to protect its security the Farmers Home Administration loaned $2,000 to petitioner Pat Bell, individually, in August 1956 to purchase feed for 30 days. An additional loan of $1,000 was made to Pat Bell in September 1956 to continue feeding during a meat-packing strike which had temporarily depressed the price of cattle (259 F. Supp. at 604).

In October 1956, petitioners sold their cattle and applied the proceeds to the payment of the four notes, leaving a balance due of $8,621.42 plus interest. Petitioners have admitted the execution and delivery of the notes (Pet. 11, 13–14).

3. The decisions of both courts below are correct, and are not in conflict with the decisions of any other courts of appeals. There is no occasion for further

review by this Court, particularly in view of the termination of the Special Livestock Loan program in 1961.

Petitioners' chief contention is that the State Director of the Farmers Home Administration unjustifiably interfered with the discretion of the County Committee by advising it that petitioners should not be permitted to use any part of the September 1955 loan to full-feed their cattle and that any further loans to petitioners should be conditioned on petitioners' agreement to sell their cattle in September 1956 (Pet. 35–37). The argument apparently is that the actions of the Farmers Home Administration adversely affected petitioners' operations, resulting in a deficiency on the sale of the cattle, and that accordingly they should not be held liable on their notes. We question whether this conclusion follows from its premise. In all events, however, it is plain that the actions taken by the Farmers Home Administration were in keeping with the statutory program.

The regulations issued by the Secretary of Agriculture for the administration of the Act stated that

> Loans will not be made to finance strictly feeding operations. However, loans may be made to finance feeding operations * * * in those cases in which otherwise eligible applicants are able to provide with their own resources the land necessary for providing adequate grazing and who produce substantially all of the feed required to carry the feeders to the finishing stage. [20 Fed. Reg. 1071.]

Both courts below held that this regulation prohibited petitioners from using loan funds to full-feed their

cattle and that the Farmers Home Administration acted properly in bringing this to the attention of the County Committee. The courts' interpretation is appropriate in view of the regulation's specific recognition of the "speculative nature of feeding operations" and the narrow circumstances in which feeding operations were permitted with loan funds. (*Ibid.*)

Similarly, both courts below held that the Farmers Home Administration did not act improperly in advising the County Committee that it had an obligation to protect the interests of the government and that any further loans to petitioners should be conditioned on their agreement to sell their cattle in September 1956. At the time petitioners applied for the March 1956 Loan they had more than 400 head of cattle, no feed and no money, and they already owed the government more than $43,000 (259 F. Supp. at 605). Petitioners had violated the terms of their 1955 plan and the applicable regulations by purchasing an excessive number of cattle and retaining their existing herd.[2] The court of appeals concurred in the trial judge's finding that petitioners' "precarious situation and financial embarrassment were not the result of any coercive acts of the Government, but the result of their own actions in buying more cattle than their land and resources would support" (259 F. Supp. at 605). Furthermore, as the district court explained, there was

[2] "§ 384.5 *Loan Purposes.* (a) Special Livestock loans may be made for purposes which are essential to carrying on livestock operations, such as the following: * * *

(9) The purchase of livestock for replacement or restocking purposes but not to permit material expansion of normal operations." (18 Fed. Reg. 4945.)

ample justification for requiring that the cattle be sold in the fall:

> * * * it appeared to be the best time for the defendants to sell their cattle. It was near the end of the grazing season and the defendants did not have the resources to winter their cattle. There was no assurance that cattle prices would be better at a later date. They could not have carried the cattle through the winter without another large loan from the Government, which would not have been sound for the borrower or economically safe for the Government. [259 F. Supp. at 605.]

Petitioners are in error in asserting that the decision below conflicts with *United States* v. *Wiley's Cove Ranch,* 295 F.2d 436 (C.A. 8, 1961) (Pet. 32–34, 43). The *Wiley's Cove Ranch* case involved a suit by the United States to recover the value of feed grants made under the 1954 Emergency Feed Program. After a County Committee had approved and made grants to defendant, the National Office of the Farmers Home Administration overruled the action of the County Committee and sought reimbursement for benefits already received. The Eighth Circuit affirmed the trial court's granting of summary judgment for the defendant, stating that the County Committee's determination of eligibility to receive benefits was "agency action by law committed to agency discretion" and not subject to judicial review (295 F.2d at 443). In the present case, on the other hand, the Farmers Home Administration did not attempt to overrule or nullify the action of the County Committee in approving loans. The Administration merely

advised the Committee of the correct course to follow in supervising petitioners' loans and in approving *future* loans to petitioners and to other applicants. And the County Committee itself approved the last three loans to provide additional feed on condition that petitioners sell their cattle in the fall of 1956. Unlike *Wiley's Cove Ranch,* there is no question in this case of judicial review of the County Committee's determination.[3]

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1967.

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[3] The other decisions cited in the petition are not in point. *United States* v. *Chas. M. Dunning Construction Co.*, 223 F. 2d 723 (C.A. 10) (Pet. 40–41) involved a suit by a war contractor to recover losses under the Lucas Act. *United States* v. *Maxwell*, 278 F. 2d 206 (C.A. 8) (Pet. 41–43) was a suit to recover penalties under the Soil Bank Act.

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In The
Supreme Court of the United States

OCTOBER TERM, 1967

PAT BELL AND HAZEL BELL, *Petitioners,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI BY PETITIONERS

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In The

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No. 821

PAT BELL AND HAZEL BELL, *Petitioners,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI BY PETITIONERS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

This Petition for Rehearing the judgment of the Court entered herein on the 15th day of January, 1968, denying petitioners' Petition for a Writ of Certiorari is filed upon grounds that were available to petitioners although not

previously presented. The question that needs answering is can a citizen rely on arrangements made by local agents when made within the law.

In the Opinion of the Tenth Circuit, Appendix A Page V, the Tenth Circuit says:

> "From the proceeds of the $32,000 loan, $21,548.89 was used to purchase 397 head of steers and heifers. 64 of these cattle were sold immediately and the money from that sale was placed in a bank and used for operating expenses. A portion of the loan funds was used to pay a local feed dealer, and the feed purchased was with the knowledge and approval of the local committee being used to full feed approximately 80 of 189 head of cattle appellants had originally owned."

A significant statement which we will discuss briefly is set forth in the Loan Application. See Petition for Certiorari, Page 12. This statement is as follows (signed by Elbert E. Pace, County Supervisor):

> "This loan is made to cover 1956 operations and overlaps a previous loan for 1955. The 55 loan is to be paid in full when 189 calves sold. He is to turn in all sales from 189 Calves (less an amount determined by committee to meet some payments are not eligible in SL loan). *For this reason* we are including practically all operating expenses in the loan. Loan funds will be budgeted."

Thus, it will be seen that from the proceeds of the sale of calves which he already had on hand at the time he made

the loan in question. Some payments were to be made for which there was no eligibility under the special livestock loan.

We submit that the petitioners, counsel for the petitioners, and both courts below have overlooked the fact the borrower was eligible under an early statute which was not repealed until 1961. This statute is as follows, Title 7, Section 1007, as follows:

> "Eligible Borrowers; terms
>
> "(a) The Secretary may make loans to farmers and stockmen who are citizens of the United States for the purchase of livestock, seed, feed, fertilizer, farm equipment, supplies, and other farm needs, the cost of reorganizing the farming enterprise or changing farming practices to accomplish more diversified or more profitable farming operations, the refinancing of existing indebtedness, and for family subsistence." (50 Stat. 524; 60 Stat. 1071; 65 Stat. 197)

Inasmuch as the original exhibit of the application that is a part of the record in this case shows that the state level wrote the word "No" opposite the portion of the ineligible payments and also the word "No" opposite the following:

> "We include funds to purchase 250 pullets now on the farm but owned by his mother."

we believe the committee was trying to operate under this production and subsistence loan. We, thus, believe

that the fact the committee did have the power as representative of the Secretary of Agriculture to make such an operating loan, that this is a substantial ground available to petitioners and not previously presented, so the court should consider the Petition for Certiorari.

In addition thereto we want to point out an incorrect statement in the Memorandum of the Government filed by the Solicitor General. At page 3 of the Solicitor's Memorandum, counsel says:

> "[A]nd that petitioners would sell the 189 head of cattle that they already owned and apply the proceeds in full payment of the previous loan from the Farmers Home Administration. * * *"

This is not so. See page 12 of the Petition for Certiorari where it quotes from the application of the petitioners:

> "The 55 loan is to be paid in full when 189 calves are sold. He is to turn in all sales from 189 calves (less an amount determined by committee to meet some payments not eligible in SL loan). * * *"

The committee loaned him the money out of the Special Livestock Loan, intending to use the proceeds from the 189 calves to loan him or extend him credit to feed the cattle and thus protect the operation. It is clear that the Committee did not set up any funds in the loan to feed or graze the 189 older cattle. Instead they were feeding the 189 cattle on credit of a local feed dealer who was to be paid out of sales from the 189 *when made*—This the

County Supervisor could do under prior law. The 189 cattle could not be considered as a part of the burden of the loan in suit. This is what is meant when the Committee said (less an amount determined by the Committee to meet some payments not eligible in SL) (Special Livestock) Loan.

There were actually two sets of cattle, big and little. It was not intended by the supervisor or the Committee to finish the little cattle, but just get them ready to sell or finish (with flexibility as to weather and prices). This was was wrecked by the State level representatives and by Washington. The handling of the 189 on credit plan may have been a delay in marketing due to conditions. This was approved by Committee.

In the Government's Memorandum at page 3, the Government seeks to put the blame on the petitioners for overbuying the cattle. We submit this was done with the full acquiescence of the committee. The Government's Memorandum says at page 3:

> "At the time petitioners obtained the loan, they were operating 900 to 1,000 acres, which would only support approximately 100 head of cattle (259 F. Supp. at 603). With the proceeds of the loan they purchased approximately 333 head of cattle for about $20,000, instead of 250 head for $16,000 as set forth in their loan application. Furthermore, they retained the 189 head of cattle which were to have been sold in the fall of 1955 to repay the earlier loan. * * *"

This is erroneous. They actually bought 397 and sold 64, leaving 333, but this was permitted by the committee. The memorandum says that when the petitioners obtained the loan they were operating 900 to 1,000 acres which would support approximately 100 head of cattle.

In the Government's Memorandum the Solicitor says at page 4:

> "In March 1956, petitioners received a second loan of $5,750 to enable them to lease a wheat pasture upon which to graze some of their cattle."

The committee under pressure of the Farm Home Administration went contrary to its loan plan, as appears at page 12 of the Petition. This plan provides:

> "This loan is based upon the land presently operated with some purchased feed."

If the act were narrowly construed and the committee under the thumb of the state level of Farm Home Administration, this would possibly be true, but the committee authorized the following:

1. 333 new cattle;
2. Feed them (by extending credit from the proceeds of the sale of 189 cattle pursuant to the earlier act referred to);
3. Allowed him to keep 103 year-old yearlings, which the committee knew in its judgment would have to be fed, and the Committee allowed it.

We submit the petitioners should be allowed to rely on the judgment and actions of the committee. The whole arrangement was a contract between the committee representing the Government and the petitioners. We submit the Government should be estopped from denying the authority of the committee to do what it did at the expense of the rancher who was not up on the finer points of technical rules where Farm Home Administrators could overrule the committee who did not have the Congressional power to overrule the committee.

Petitioners can't find no place where they agreed at the time of acceptance of the new arrangement that the committee was not allowed to take another look at the situation in the fall of 1956

The committee in the fall of 1956 when they sold the cattle told Bell it was out of their hands.

The committee intended local feed credit, probably under the earlier act, to support the operation and the Bells relied on this.

For these reasons the Petition for Rehearing should be granted.

Respectfully submitted,

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Attorneys for Petitioners

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, Robert J. Woolsey, certify that I have read the foregoing Petition and I certify that the Petition for Rehearing is presented in good faith and not for delay and that the Petition is restricted to substantial grounds set forth in the Petition for Rehearing which were available to the Petitioners although not previously presented.

Dated this 3d day of February, 1968.

Robert J. Woolsey